

Civil No. BO 68401

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION 4

GERALD ARMSTRONG

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF
LOS ANGELES, CENTRAL DISTRICT

Respondent.

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
not-for-profit religious
corporation

Real Party in Interest

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HUB LAW OFFICES

REPLY TO PRELIMINARY MEMORANDUM OF POINTS
AND AUTHORITIES IN OPPOSITION TO PETITION
FOR WRIT OF MANDATE

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Almost three weeks after the initial filing of the herein Petition for Writ of Mandate which seeks a ruling that a contract to hinder witnesses from testifying in court violates public policy, Real Party in Interest, Scientology, has filed a Preliminary Memorandum of Points and Authorities in Opposition.¹ In substance Scientology argues the Petition for Writ of Mandate filed by Defendant-Petitioner Gerald Armstrong should be denied because there is no "emergency" to rule on the public policy issue. However, procedural points raised therein are inaccurate and are responded to herein.

In footnote 1 on page 3, Scientology states that since Armstrong filed a Notice of Appeal regarding the partial granting of a Preliminary Injunction, the same issues will be covered in that Appeal. Scientology argues the Court should deny this Writ so that a complete record will be before the Court in the Appeal.²

A complete record is before the Court. The Preliminary Injunction dealt with many issues in addition to public policy, such as duress, consideration, and other matters relating to the

¹ While entitled a "Preliminary Memorandum of Points and Authorities in Opposition to Petition for Writ of Mandate" in fact Scientology's filing contains no Points and Authorities on the issue on whether or not Scientology's contract violates public policy. Instead, it appears to be a disguised Motion to Dismiss the Petition. For the reasons stated herein, we believe this "Motion" should be denied.

² This Appeal was noted in the Petition (p. 8, footnote 11). Irreparable injury to the legal system if we must wait for the slower "appeal process" was also noted. (pp. 2-3, 8, footnote 11). Armstrong will further suffer heavy litigation costs while the Appeal is processed. He should not bear such burden over a contract that clearly violates public policy.

issue of the formation of the contract and whether or not Plaintiff will prevail on these issues. These matters are within the discretion of the Court and are not issues raised on appeal. The only issue to be raised on appeal is public policy. In that regard, the question as to whether or not the contract on its face violates public policy is completely before this Court, i.e, the subject contracts themselves (pp. 74, 141-144). There is no additional record needed.

Scientology argues there is no need for extraordinary relief because Armstrong's interests are fully protected because Scientology has posted a substantial bond. The contract violates public policy not so much because it suppresses or injures Armstrong, but because it denies due process and fair trials to all litigants worldwide involved in any litigation or potential litigation with Scientology.³ It is the legal system that suffers day by day as long as the herein litigation remains pending. It further stands as a sword hanging over the heads of other former Scientologists who have signed similar contracts, and is an encouragement for others to adopt similar contractual language.⁴

³ Nor can a "bond" repair the day-to-day loss of freedom of speech.

⁴ Scientology again falsely states to this Court (Preliminary Memorandum, p. 3) that the public policy argument was denied by Judge Dufficy of the Superior Court of the County of Marin. In fact, Judge Dufficy signed the TRO specifically stating he was not ruling on any of the issues, but was maintaining the status quo (168-69) until he could set a hearing. Scientology then mischaracterizes (Preliminary Memorandum, p. 3) the ruling of Judge Sohigian on the Preliminary Injunction (pp. 288-89) as "granting" Scientology's Motion. The Motion was granted in part (as to civil litigants) and denied in part (as to governmental agencies). That ruling causes irreparable harm

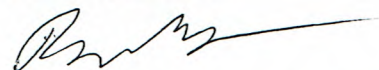
Whenever it appears that a subject contract may be in violation of public policy it is the duty of the courts to determine same, even if on its own inquiry. The question may even be raised for the first time by the Appellate Courts, if not considered by the trial court. Lewis and Queens v. M.M. Ball & Sons 48 C. 2d, 141; Church v. Wade 80 Cal. 2d 412.

Therefore, it is respectfully requested that the Petition for Writ of Mandate by Gerald Armstrong be granted. ⁵

Date: August 4, 1992

Respectfully submitted,

PAUL MORANTZ
FORD GREENE



Attorneys for Petitioner
Gerald Armstrong

until this issue can be addressed by this Court. Finally, Scientology misleads, stating that "Armstrong extensively briefed the public policy argument before Judge David Horowitz . . ." and that Judge Horowitz overruled the Demurrer (Preliminary Memorandum, p. 3). Scientology omits that in doing so, Judge Horowitz refused to rule on the issue of whether or not the contract violates public policy (424). Petitioner claims that it was an abuse of process not to rule one way or another whether or not the contract on its face violated public policy. This is the basis of the Petition.

Scientology also omits that Judge Bruce Geernaert in Armstrong I, (p. 200) ruled the contract violated public policy. Even if the record and trial rulings were as stated by Scientology it would be irrelevant. Our system of Petitions to Appellate Courts exists to remedy wrong decisions of trial courts.

⁵ In the Petition (p. 3, footnote 4) Petitioner stated the transcript of oral argument would be provided when obtained. Petitioner has been advised by the court reporter that the transcript will be delivered shortly.

PROOF OF SERVICE BY MAIL

I am a resident of Los Angeles County, am over the age of eighteen, and not a party to the herein action. My business address is P.O. Box 511, Pacific Palisades, California 90272.

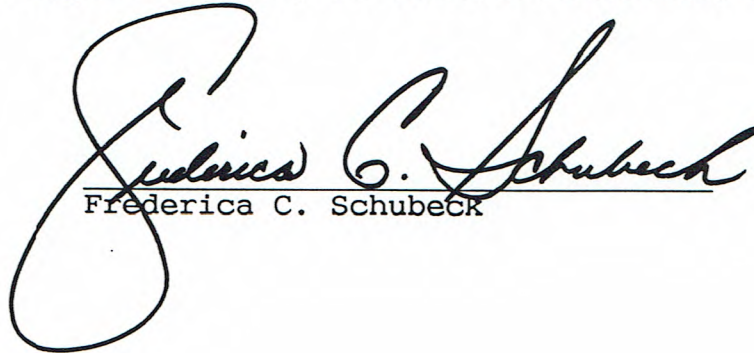
On August 4, 1992, I served the within Reply to Preliminary Memorandum of Points and Authorities in Opposition to Petition for Writ of Mandate on the parties by placing a copy of the same in a sealed envelope with postage thereon and placed the same in the United States mail at Pacific Palisades address as follows:

Andrew H. Wilson
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235 Montgomery Street
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Laurie J. Bartilson
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6255 Sunset Boulevard
Suite 2000
Hollywood, CA 90028

I declare that the above is true under the penalty of perjury.

Executed on August 4, 1992, at Pacific Palisades, California.



Frederica C. Schubeck